

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMONT L. CALHOUN,

No. 2:20-cv-2209 DB P

Plaintiff,

ORDER

v.

R. DELA CRUZ, et al.,
Defendants.

Plaintiff, a state prisoner, proceeds pro se and seeks relief pursuant to 42 U.S.C. § 1983. On August 10, 2021, the court ordered the complaint served on defendants. Process directed to defendants R. Wilridge and S. Magnito (or S. Maganito) came back unserved because, for R. Wilridge, “CDCR – defendant is unable to locate” and, for S. Magnito, “Magnito is not a current employee of DSit or CDCR & Therefore department cannot accept service on defendant’s behalf[.]” (ECF Nos. 17 & 21.)

By order dated October 20, 2021 (ECF No. 23), plaintiff was ordered to provide additional information to serve these two defendants. Plaintiff was directed to promptly “seek such information through discovery, the California Public Records Act, Calif. Gov’t. Code §6250, et seq., or other means available to plaintiff.” (Id.) Plaintiff was further informed that he could seek judicial intervention “[i]f access to the required information was denied or unreasonably delayed.” (Id.)

1 Plaintiff has filed a motion entitled motion to compel service, seeking to “compel” service
2 on the two unserved defendants and requesting that the court hold a hearing on this matter. (ECF
3 No. 27.) Defendants have opposed the motion and plaintiff has filed a reply. (ECF Nos. 28, 29.)

4 In the pending motion, plaintiff states he sought the information needed about the two
5 unserved defendants by sending a letter request to the Attorney General. Plaintiff received a
6 response stating the office had no additional information regarding those defendants and would be
7 unable to aid him in identifying, contacting, and serving them. Plaintiff’s motion suggests he was
8 not provided with the requested information due to safety and security reasons. In the reply
9 papers filed, plaintiff further indicates he believes he would be denied the information if he were
10 to file a request under the California Public Records Act, Calif. Gov’t. Code §6250, et seq.

11 Defendants oppose the pending motion to compel service on several grounds, including
12 that the motion does not properly seek any relief contemplated by the Federal Rules of Civil
13 Procedure. Defendants also assert the motion should be denied because plaintiff has not taken any
14 of the actions the court directed plaintiff to take prior to requesting court assistance. Defendants
15 argue plaintiff should either await the initiation of discovery to make discovery requests seeking
16 the information or file public records requests as the court previously directed.

17 Rule 4 of the Federal Rules of Civil Procedure addresses service of summons. Nothing in
18 Rule 4 directs or provides for the court to hold a hearing to assist plaintiff in identifying or
19 locating the named defendants. In addition, the court has no means or basis to “compel” service
20 on defendants whose identities and locations are unknown.

21 Plaintiff is directed to pursue one of the options set forth in the court’s October 20, 2021
22 order prior to requesting court assistance. Plaintiff shall either seek the needed information
23 through the California Public Records Act, Calif. Gov’t. Code § 6250, et seq., or through
24 discovery once the court opens discovery through issuance of a discovery and scheduling order.
25 Although plaintiff has expressed skepticism that he will be provided with the information he
26 needs in response to such requests, he must attempt one of these methods prior to obtaining court
27 assistance. Plaintiff’s letter request to the Attorney General does not suffice to show that he has
28 been denied access to the information needed for service of process. If plaintiff seeks the needed

1 information through one of the specified methods and his access is denied or unreasonably
2 delayed, then plaintiff may seek again judicial intervention.

3 In accordance with the above, IT IS HEREBY ORDERED that plaintiff's motion to
4 compel service (ECF No. 27) is denied.

5 Dated: January 3, 2022

6
7 DLB7
8 calh2209.mtcser



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28